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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,634	02/03/2004	Cynthia R. Aiken	3127 PUS	4111

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KONSTANTINE J. DIAMOND  
4010 E. 26th St.  
Los Angeles, CA 90023

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT PAPER NUMBER

3727

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/771,634

Applicant(s)

R. AIKEN, CYNTHIA

Examiner

Robin A. Hylton

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Specification*

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### ***Claim Rejections - 35 USC § 112***

2. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 recites the limitation "the hinge portion" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 9-11 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Lumpp (US 4,177,933).

Claims 9-11 and 16 are directed to a lid only. The lid of Lumpp is receivable within a container having a tapered sidewall.

Container has a sidewall **10** and a base (not shown) having a lid **14**, the lid having a central portion **14** and a flexible portion **20** having an outer portion **22** for abutting the sidewall of the container. The flexible portion urges the outer portion toward the inner surface of the container wall.

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Regarding stacking of two or more containers, the bottom of one container will rest upon the lid of a container upon which it is stacked.

5. Claims 1-3,6,8-11,15-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Padovani (US 4,726,489).

See column 2, lines 58-61 describing the outer surface of the peripheral portion being moves in a radial direction upon movement with respect to the container. See figures7-12 depicting a handle formed in the central portion.

6. Claims 9-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Wanderer (US 4,287,996).

Hinge **23** allows for movement of peripheral portion 22 with respect to a container sidewall.

7. Claims 9-13, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Straussman (US 5,839,604).

Claims 9-13 are directed to a lid only. The lid of Straussman is receivable within a container having a tapered sidewall.

Regarding claims 17 and 18, a container **10** having a container wall and a lid **2** are disclosed.

The lid has central portion **4** surrounded by a peripheral portion having a hinge **38** (and **40**) allowing movement of the peripheral portion with respect to the container sidewall, the peripheral portion having an outer portion for abutting the container sidewall.

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8. Claims 9-11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Grabher (US 6,138,899) in view of Dudzik.

Grabher teaches a lid having a flexible peripheral section of alternating upwardly and downwardly extending portions which are collapsibly deformable as the lid is moved along a predetermined range within the compartment. Note the claims does not preclude only a portion of the lid to be moving.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Straussman in view of Dudzik (US 4,887,735).

Straussman teaches the claimed container assembly except for container having a tapered sidewall.

Dudzik teaches an internally fit lid in a container which can have any desired geometry. See column 2, lines 45-48.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the sidewalls of Straussman of a cylindrical or tapered design as taught by Dudzik since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

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11. Claims 1,2, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grabher (US 6,138,899) in view of Dudzik.

Grabher teaches a lid having a flexible peripheral section of alternating upwardly and downwardly extending portions which are collapsibly deformable as the lid is moved along a predetermined range within the compartment. Note the claims does not preclude only a portion of the lid to be moving. Thus, Grabher teaches the claimed container assembly except for container having a tapered sidewall.

Dudzik teaches an internally fit lid in a container which can have any desired geometry. See column 2, lines 45-48.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the sidewalls of Grabher of a cylindrical or tapered design as taught by Dudzik since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

13. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

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14. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature \_\_\_\_\_

Date \_\_\_\_\_


15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH  
November 28, 2005

  
Robin A. Hylton  
Primary Examiner  
GAU 3727